IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1895 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA R KURANI: Petitioner.

Versus

PRATAPRAI KUSALCHAND & Others: Opponents.

Appearance:

MR SURESH M SHAH for Petitioner

MR JR NANAVATI for Opponents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 11/01/2001

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dated 12th October 1983 passed by the then learned Extra Assistant Judge at Junagadh in Regular Civil Appeal No. 111 of 1982 dismissing the appeal and confirming the judgment and decree dated 21st April 1982 passed by the then learned Civil Judge (JD), Manavadar in Regular Civil Suit No. 112 of 1978 directing the present petitioner (original defendant No.2) to hand over peaceful and vacant possession of a room (for short "the suit-room")

let to the opponent No.2 (original-plaintiff), the original-defendant No.2 has preferred this Revision Application.

2. The facts, which led the present petitioner to prefer this Revision may, in brief, be stated. There is a house in the street near Baug Darvaja, Manavadar. In that house on the ground floor there is the suit room which is let to M/s. Rugnath Pragji, a firm of which the petitioner and opponent No.3 are the partners. That house was partitioned between the opponents No. 1 & 2 on one hand and their uncle on the other hand. The suit room fell to the share of the opponents No. 1 & 2. The suit room was let to the petitioner and opponent No.3 by the father of the opponents No. 1 & 2. The same was let for residential purpose. The opponent No.2 resides on the upstairs of the suit room, while the opponent No.1 resides in the house of his uncle situated to the North of the suit room. After the house was partitioned, the opponents No. 1 & 2 were in need of the suit room for their bonafide requirement. The opponents No. 1 & 2 also found that the petitioner and opponent No.3 had sublet and they were also in arrears of rent. They therefore gave a notice calling upon the petitioner and opponent No.3 to pay the rent and hand over the vacant possession of the suit room. As they paid no heed the opponents No. 1 & 2 were constrained to file Regular Civil Suit No. 112 of 1978 in the Court of the Civil Judge (JD), Manavadar, under the provisions of the Bombay Rent Act to recover the possession of the suit room and the amounts of rent that had become due till then. The petitioner and opponent No.3 on being served with the summons appeared and resisted the suit filing written statement. Necessary issues were then framed and evidence adduced by both the parties was recorded. Appreciating the evidence before him, the then learned Civil Judge (JD) at Manavadar, on 24th April 1982 passed the decree directing the petitioner and opponent No.3 to hand over the vacant possession of the suit room accepting the case of bonafide requirement. Being aggrieved by such judgment and decree, the present petitioner filed the appeal, being Regular Civil Appeal No. 111 of 1982 in the District Court at Junagadh, which was assigned to the then learned Extra Assistant Judge, who, hearing the parties, dismissed the appeal and maintained the judgment and decree passed by the trial Court. It is against that judgment and decree, this Revision Application is filed by the petitioner, the original-defendant No.2.

3. The judgment and decree passed are assailed only

on one ground. It is the contention of the learned advocate representing the petitioner that formerly the house in question belonged to Bhagwanji Harjivan. Bhagwanji Harjivan had 4 sons, namely (1) Khushalchand (the father of opponents No. 1 & 2), (2) Tribhovandas, (3) Hemchand and (4) Durlabhdas. After the death of Bhagwanji Harjivan and Khushalchand, the house was partitioned and a writing thereof was then executed on 27th August 1973. The suit room fell to the share of Khushalchand but as he was not alive it fell to the share of the opponents No. 1 & 2. The opponents Nos. 1 & 2 therefore became the fulfledged or absolute owners from the day the house was partitioned. They therefore became the sole owners and landlords within the meaning of the Bombay Rent Act from 27th August 1973, the day on which the house was partitioned and the suit room fell to their share. They thus became the owners after 1st January 1964. As per the Explanation to Section 13(1)(g) of the Bombay Rent Act, a person is not to be deemed to be a landlord unless he acquires interest in the premises on the day prior to the beginning of the tenancy or the first day of January 1964 whichever is later. The opponents Nos.1 & 2 when acquired the fulfledged interest and absolute title after 1st January 1964, they were, in view of the Explanation to Section 13 (1)(g), not the landlords and as such not entitled to the possession.

4. In reply to such contention, Mr. Nanavati, learned advocate representing the opponents No. 1 & 2 submits that such plea was not taken before both the courts below. It is therefore now not open to the petitioner to raise the new plea. In support of such contention, my attention is drawn to the decision of this Court rendered in the case of Mistry Bhikhalal Bhovan v. Sunni Vora Noormamad Abdul Karim and Others - XIX 1978 G.L.R. 248. In the alternative, it is also his submission that after the partition the person being a co-sharer no doubt becomes the sole full owner, but he would not acquire the status of the landlord within the meaning of Section 13(1)(g) only after partition. Even prior to the division of the property he being the co-sharer and having interest in the property, becomes & remains to be the landlord. In support of his such contention, he has drawn my attention to the decision of this Court in Heirs of Vaidya Pannalal, J & Ors. Vs. Jayantilal Chimanlal Shah - 1997 (2) GLH (UJ) 10. The opponents Nos. 1 & 2 were in fact the landlords prior to 1st January 1964 as they were having interest may be joint in the suit room. It was therefore open to the present opponents No. 1 and 2, being the landlords within the meaning of Section 13 (1)(g) of the Bombay

Rent Act to file the suit and claim possession of the suit room on the ground of bonafide requirement.

5. At the revisional stage, a new ground cannot be permitted to be raised for the first time if the ground sought to be raised requires factual investigation and that is what is made clear in the decision of Mistry Bhikhalal Bhovan (Supra) but if no factual investigation is necessary and the new plea sought to be raised is a pure question of law, requiring no factual inquiry the same can be allowed to be raised for full and final adjudication of the matter.

6. In the case on hand, partition of the suit room having fallen to the share of the opponents No. 1 & 2 from 27th August 1973 is not in dispute. In view of such admitted fact for answering the new point raised, factual investigation is not necessary. Whether the person who is having the interest being the co-owner in the joint property can be said to have become the landlord only after the partition of the joint property or prior to it is the point arises for consideration and that being a pure question of law, I permitted the petitioner's learned advocate to raise the same so as to have full & final adjudication of the matter.

7. Perusing the Explanation to Section 13(1)(g), what is the decisive factor is the interest in the property and not the sole ownership and that is made clear by the later portion of the Explanation which provides that if the interest has devolved on the person by inheritance or succession, as the predecessor-in-title had acquired the interest at a date prior to the beginning of the tenancy or the first day of January 1964 whichever is later, the said person will be the landlord within the meaning of Section 13(1)(g). This portion of the Explanation was examined by this court in the case of Heirs of Vaidya Pannalal J & Others (Supra) wherein it is laid down that the plain reading of the Explanation shows that the person should have acquired the interest in the premises latest before 1st day of January 1964. I may add that it is not necessary that such interest must be as the fulfledged or absolute owner. It is sufficient if he is having the interest being the co-owner of the property. The acquisition of interest in the property is the decisive factor. The father of opponents Nos. 1 & 2 had let the suit room which is situated in the house. It was at the relevant time not partitioned and the same was the joint property amongst the heirs and legal representatives of Bhagwanji Harjivan. During the lifetime of their father Khushalchand they were having

the interest in the property because Khushalchand and his brothers had inherited the same from their father Bhagwanji Harjivan. When accordingly the opponents Nos. 1 & 2 were having the interest as co-sharers in the property, they can be said to be the landlords within the meaning of Section 13(1)(g) regardless of the fact that they became the absolute owners when the house was partitioned on 27th August 1973. It was therefore within their competence to prefer the suit to recover possession from the tenant on the ground available in law and also on the ground of bonafide requirement which is also available under the Bombay Rent Act.

8. The next contention raised by Mr. Shah, the learned advocate, is that even in that case also the requirement of opponents No. 1 & 2 cannot be said to be bonafide. It was a simple desire or wish. He has then drawn my attention to the averments made in partition deed, Ex. 32. It is made clear therein that the portion of the joint property the opponents Nos. 1 & 2 were at the time of partition occupying and fallen to the share of their uncle would be continued to be in their possession till they get the possession of the suit room from the petitioner and opponent No.3. Their possesssion of the premises fallen to the share of their uncle was thus protected and there was no need for them to have the possession of the suit room. Their uncle had also not asked them to vacate the premises giving a notice. There is no time limit fixed in the partition deed upto what period the opponents No. 1 & 2 would remain in possession. The requirement is therefore a sheer desire.

9. Whenever the landlord comes with the case that he requires the premises in possession of the tenant for his bonafide requirement, the Court has to proceed with the assumption that his requirement is bonafide unless the evidence on record shows that the requirement is not reasonable and bonafide. If the landlord resides in the premises of others, may be his relative and if does not wish to remain under the obligation of his relative or friend and prefers to go to his premises in possession of the tenant, his need even in the absence of the notice to vacate must be termed bonafide and reasonable and not a sheer desire or a wish. In this case, therefore, the requirement of opponents No. 1 & 2 cannot be, as canvassed, held to be the sheer desire or a wish, or a need.

10. When the landlord establishes his case of bonafide requirement in law, the question regarding hardship in view of Section 13 (2) has to be considered,

but in Revision, I have not to enter into the factual aspect thereof. Both the Courts below have come to the concurrent finding that the opponents No. 1 & 2 will have to face greater hardship if the decree of eviction is not passed rather than what the petitioner and opponent No.3 if the decree is passed. The said concurrent finding on fact has to be accepted.

11. For the aforesaid reason, there is no justifiable reason to interfere with the judgment and decree passed by both the courts below. The Revision, therefore, fails and is hereby dismissed with no order as to costs. With a view to enable the petitioner to vacate conveniently, three months' time to vacate from today is required to be granted. The decree of eviction, therefore, shall not be executed for three months from today.
rmr. ======